

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONVERGEN ENERGY LLC, et al.,

Plaintiffs,

-v-

STEVEN J. BROOKS, et al.,

Defendants.

Civil Action No. 20-cv-3746 (LJL)

DECLARATION OF BENJAMIN D.
LAFROMBOIS IN SUPPORT OF BRIEF IN
OPPOSITION TO PLAINTIFFS' MOTION TO
STAY ARBITRATION

I, Benjamin D. LaFrombois, under penalty of perjury, do declare and state as follows:

1. I am an adult resident of the State of Wisconsin. I am a partner at the law firm of von Briesen & Roper, s.c., and a duly licensed member of the State Bar of Wisconsin. I make this declaration on personal knowledge in support of Defendants Convergen Energy WI, LLC's ("CE-Wisconsin") response to Plaintiffs' Motion to Stay Arbitration of the above-captioned action.
2. In addition to serving as CE-Wisconsin's attorney in this case, I and Attorney William Fischer of von Briesen & Roper, s.c., have been admitted pro hac vice to represent CE- Wisconsin in the Southern District of New York, and have appeared in that case on behalf of CE- Wisconsin subject to jurisdictional objections. As a result, I am familiar with the pleadings and progress in this action.
3. Attached as Exhibit A is a true copy of a May 11, 2020, email from Attorney Michael Stolper to CE-Wisconsin and various other individuals, along with a draft of a New York state court complaint.
4. On May 14, 2020, CE-Wisconsin, through its attorneys von Briesen & Roper, s.c., filed a declaratory judgment action in Brown County, Wisconsin, Circuit Court in response to the draft complaint it had received from Attorney Stolper. The Brown County complaint asked the court to clarify the rights and obligations between CE-Wisconsin and its officers and Libra Capital US,

LLC (“Libra”) and L’Anse Warden Electric Company, LLC (“LWEC”) under various agreements, including the Supply Agreement.

5. Libra and LWEC have since removed the Brown County case to the Eastern District of Wisconsin.
6. Unbeknownst to CE-Wisconsin, Libra and LWEC filed the SDNY action within hours of CE-Wisconsin's Brown County complaint on May 14, 2020. Attached as Exhibit B is a true copy of Libra and LWEC's SDNY Complaint.
7. Concurrent with its complaint, Libra applied for a temporary restraining order and preliminary injunction relating to its demands for the preservation and production of trade secret and confidential information claims pursuant to 18 U.S.C. § 1836 and 18 U.S.C. § 2701.
8. After a preliminary hearing on May 19, 2020, the SDNY court, Hon. Lewis J. Liman presiding, entered a temporary restraining order to ensure preservation of records, and ordered limited expedited discovery relating only to Libra's trade secret and confidential information claims. Attached as Exhibit C is a true copy of the court's TRO.
9. Since the May 19 hearing, the parties in New York have engaged in extensive meet and confer sessions in order to attempt to resolve the issues raised by Libra's motion.
10. There have been no answers or responses to the complaint in New York, no scheduling conferences, and no substantive discovery.
11. As of the date of this declaration, several defendants in the SDNY action have yet to be served with process.
12. In the Eastern District of Wisconsin, Judge Griesbach has not taken any substantive action, and the parties have stipulated to extend the response date for the Eastern District of Wisconsin action to July 17, 2020.
13. Until CE-Wisconsin filed this action seeking preliminary injunctive relief, there have been no proceedings in any court relating to the Supply Agreement. The proceedings in the SDNY to date have been limited to issues raised by Libra's preliminary injunction motion.

14. On June 23, 2020, CE-Wisconsin filed an amended complaint in the Eastern District of Wisconsin to eliminate the Supply Agreement as a basis for the relief sought in that case as moot.
15. Based on information and belief, LWEC has yet to respond to the American Arbitration Association requests to facilitate selection of an arbitrator, or any of their inquiries.

FURTHER THIS DECLARANT SAYETH NOT.

Dated this 7th day of July, 2020.

By: 
Benjamin LaFrombois, Esq.